

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

Capital One Financial Corporation,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 1:11-CV-750 (LO/TRJ)
)	
John A. Kanas and John Bohlsen,)	
)	
Defendants.)	
_____)	

**MOTION OF DEFENDANTS KANAS
AND BOHLSSEN FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendants John A. Kanas and John Bohlsen (“Defendants”) respectfully submit this Motion for Summary Judgment as to all claims asserted by plaintiff, Capital One Financial Corporation (“Plaintiff” or “Capital One”), for the reasons set forth in the accompanying Memorandum.

Kanas and Bohlsen are former employees of Capital One. In connection with their resignations from Capital One in 2007, each executed a Separation and Transition Advisory Services Agreement (“Separation Agreement”) that, among other things, included a five-year non-competition covenant. In 2009, Kanas and Bohlsen became part of a group of investors that formed a Florida-based bank that purchased from the Federal Deposit Insurance Corporation (“FDIC”) the assets and liabilities of a bankrupt Florida thrift to create a new Florida bank,

BankUnited.¹ In this suit, Capital One claims that Defendants breached that covenant due to certain actions taken by BankUnited, as detailed in the Memorandum.

By this motion, Kanas and Bohlsen seek the following relief:

- (1) An order voiding the restrictive covenants in their entirety for overbreadth (Memorandum, Section II) and impermissible vagueness (*id.*, Section III);
- (2) In the alternative, an order (a) granting Kanas and Bohlsen partial summary judgment limiting the scope of activities that may be alleged to breach the covenants (*id.*, Section IV), and (b) striking the “disgorgement” remedy by which Capital One seeks return of stock the Defendants received (*id.*, Section V).

Dated: April 6, 2012

Respectfully submitted,

/s/ James H. Rodio
David Boies
Pro hac vice
BOIES SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York 10504
Telephone: 914.749.8200
Fax: 914.749.8300
Email: dboies@bsfllp.com

Stuart H. Singer
Pro hac vice
Carlos M. Sires
Pro hac vice
BOIES SCHILLER & FLEXNER LLP
401 E. Las. Olas Blvd., Suite 1200

¹ “BankUnited” refers to the federally chartered institution BankUnited, N.A. “BankUnited, Inc.” refers to the publicly traded Delaware corporation, BankUnited, Inc., the holding company for BankUnited. “BankUnited, FSB,” refers to BankUnited Federal Savings Bank, the entity that pre-existed BankUnited and certain assets of which were purchased and certain liabilities of which were assumed by BankUnited in May 2009. These and other terms defined in this Motion shall have the same meaning in the Memorandum.

Ft. Lauderdale, FL 33301
Telephone: 954.356.0011
Fax.: 954.356.0022
Email: ssinger@bsfllp.com
csires@bsfllp.com

Matthew W. Friedrich
Pro hac vice
David Ellis
Virginia Bar No.: 74860
BOIES SCHILLER & FLEXNER LLP
5301 Wisconsin Ave. N.W.
Washington D.C. 20015
Telephone: 202.274.1113
Fax: 202.237.6131
Email: mfriedrich@bsfllp.com

James H. Rodio, PLC
Virginia Bar No. 20139
2121 Eisenhower Ave. Suite 300
Alexandria, Virginia 22314
Telephone: 703 549-2288
Fax: 703 562-7011
Email: jimrodio@rodiolaw.com

*Attorneys for Defendants, John A. Kanas
and John Bohlsen*

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2012 I electronically filed the foregoing Motion of Defendants Kanas and Bohlsen for Summary Judgment with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

Jason Craig Schwartz
Gibson Dunn & Crutcher LLP
1050 Connecticut Ave NW
Washington, DC 20036-5306
jschwartz@gibsondunn.com

Michael S. Diamant
Gibson Dunn & Crutcher LLP
1050 Connecticut Ave NW
Washington, DC 20036-5306
mdiamant@gibsondunn.com

James A. Murphy
Murphy & McGonigle
4870 Sadler Road, Suite 301
Glen Allen, VA 23060
jmurphy@mmlawus.com

Brent Manning Timberlake, Esq.
Capital One Service LLC
15000 Capital One Drive
Richmond, VA 23238
brent.timberlake@capitalone.com

/s/ James H. Rodio
James H. Rodio
James H. Rodio, PLC
Attorney for John A Kanas and
John Bohlsen
Virginia Bar No. 20139
2121 Eisenhower Ave. Suite 300
Alexandria, Virginia 22314
Phone: 703 549-2288
Facsimile: 703 562-7011
Email: jimrodio@rodiolaw.com